No. 84-1295 (2)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GWENDOLYN M. PATTON,

Petitioner,

—v.—

ROBERT POLK THOMSON and WILLIAM S. EDMONDS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

ARTHUR KINOY*
FRANK E. DEALE
c/o Center for Constitutional
Rights
853 Broadway, 14th Floor
New York, New York 10003
(212) 674-3303

VANZETTA PENN DURANT
639 Martha Street
Montgomery, Alabama 36104

**Counsel of Record for Petitioner*

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PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

1. Respondent argues that petitioner's "temporary handicap" required simply the two-week "reasonable accommodation" offered by respondent and refused by petitioner. The record does not support respondent's assertions. This is a continuing controversy.

(A) To this day Petitioner's classes are located on the second floor of Patterson Hall, a building without an elevator, at Alabama State University. Repeated walking up and down stairs aggravates her condition and accelerates the process that inevitably requires surgery. (T.T. at 46-52, 96-97; Riase Dep. at 24-25.)

(B) Petitioner's hammertoe and ulcer conditions, which were corrected in

her leg handicap are caused by pressure from walking and are exacerbated by climbing stairs. Upon recurrence, the only treatment is immediate surgery and subsequent use of crutches during recuperation. (Riase Dep. at 24-25.)

(C) Petitioner's underlying handicap is not temporary. She has been certified permanently handicapped in New York City, Montgomery Alabama, the state of Alabama, and by Alabama State University. (T.T. 40-43.)

2. Unlike respondent, petitioner does not ask this Court to rule on whether the University's accommodation was reasonable, or whether it represents a proper balance between the rights of the handicapped and the interest of the University in preserving its program. Petitioner simply requests that the lower courts reconsider her case in light of governing law explicated in Alexander v.

Choate, ___ U.S. ___, 105 S.Ct. 712 (1985).

3. Respondents argue that the court below did not apply the City of Mobile v. Bolden intent standard to §504. Petitioner respectfully refers the Court to the District Court Opinion, Petitioner's Appendix at A18. The standard there enunciated is inapplicable to §504. As the unanimous Court found in Alexander, discriminatory animus is not necessary to establish discrimination under §504.

4. Respondents argue that there "appears to be uniformity" in the decisions of the federal courts of appeals regarding the issue of states' sovereign immunity. On the contrary, there is conflict among the circuits on the issue of whether §504 overrides states' sovereign immunity. See Atascadero State Hospital v. Scanlon, 735 F.2d 359 (9th

Cir.), cert granted, ___ U.S. ____, 105 S.Ct. 503 (1984).

Accordingly, petitioner requests the Court issue the writ of certiorari, or, in the alternative, grant the writ for certiorari and vacate the decisions of the lower courts and remand for reconsideration in light of Alexander.

Respectfully submitted,

Arthur Kinoy*
Frank E. Deale
Center for Constitutional Rights
853 Broadway, 14th Floor
New York, N.Y. 10003

Vanzetta Penn Durant
639 Martha Street
Montgomery, AL 36104

Attorneys for Petitioner

New York, N.Y.
March 18, 1985

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*Counsel of Record for Petitioner.